

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :Criminal Action No.:
Plaintiff, :2:19-cr-00717-GAM-1
v :
:
WILLIAM A. MERLINO :Philadelphia, Pennsylvania
Defendants. :August 3, 2022 at 9:30 a.m.
:
:**PARTIAL TRANSCRIPT**

.PORTION STARTING AT 3:28:14

TRANSCRIPT OF CRIMINAL JURY TRIAL DAY ONE
BEFORE THE HONORABLE GERALD A. MCHUGH
UNITED STATES DISTRICT COURT JUDGE

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1 Court Recorder: Mia Harvey

2 Transcription Service: Associated Reporters Int'l., Inc.
10 River Drive
3 Massena, New York 13662

4 Proceedings recorded by electronic sound recording;
5 transcript produced by transcription service.
6

7 I N D E X O F P R O C E E D I N G S

8 NATASHA BOWENS: Sworn

9 Direct Examination by Ms. Burnes 16
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10 E X H I B I T L I S T

11 Exhibit ONE 7
12 Screenshot of Defendant's twitter account

13 Government Twenty-Nine P 22
Photo of envelope

14 Government Fifty-Four P 22
Photo

15 Government Sixty-Nine P 22
Photo

16 Government Eighty-Six P 22
Photo

17

18

19

20

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1 (The portion requested commenced at
2 03:28:14)

3 THE COURT: All right. Ladies and
4 gentlemen welcome back. Went a little longer on that
5 break so counsel could move in everything they needed.
6 Please be seated counsel and now as I mentioned we are
7 going to be hearing opening statements beginning with the
8 government, keeping in mind that opening statements are
9 not evidence in the case, but the attorneys view of what
10 the evidence will show.

11 And with that I recognize Ms. Burnes.

12 OPENING STATEMENT

13 MS. BURNES: Thank you, Your Honor. This
14 is a case about a scam, about a man who sold a dangerous
15 chemical over the internet as a weight-loss drug. The
16 chemical is 2,4-Dinitrophenol, you'll hear it called
17 D.N.P. The chemical is a yellow powder that is toxic to
18 humans. It's a chemical that's used in herbicides. It's
19 a chemical that's used in explosives. And paying
20 customers bought this D.N.P. as a weight-loss drug. The
21 scam is selling this chemical for human consumption and
22 lying about it. This case is not a fraud on customers.
23 You will see emails that customers wanted these capsules.

24 The scam is lying and hiding from the
25 F.D.A., the Food and Drug Administration. The scam is

1 hiding from Customs and Border Protection, from the
2 regulatory agencies designed to keep us safe. The
3 defendant, William Merlino, sold the 2,4-Dinitrophenol as
4 a diet drug.

5 But his websites and his marketing and his
6 labeling said agricultural use and fertilizer and not for
7 human consumption. With your commonsense, you'll learn
8 that this is a scam. A scam intended to defraud and
9 mislead the F.D.A. and the C.B.P. You will learn that
10 terms like agricultural use, fertilizer, not for human
11 consumption, that's just a cover-up so he wouldn't get
12 caught selling D.N.P., that drug, for human use.

13 Good afternoon, members of the jury I'm
14 going to introduce myself again, I'm Joan Burnes, I'm the
15 A.U.S.A. on this case, and together with Special Agent,
16 Bryan Arcari of F.D.A.'s Office of Criminal Investigation
17 and paralegal specialist Kevin Conroy who will be
18 presenting the evidence in this case. And we thank you
19 for your attention.

20 This is a case where the defendant, William
21 Merlino operated a business for paying customers and used
22 the name SimCare. Now, he's a retired doctor and SimCare
23 was a name associated with his private practice. But make
24 no -- make no mistake. This was a business about paying
25 customers, not about the medical practice of patients.

1 And from his house in Mays Landing, New Jersey, he
2 operated a business to encapsulate, to put into capsules
3 -- in pill form D.N.P. for human consumption. He
4 advertised on Twitter, and he used eBay, the internet
5 online sales place to make his sales.

6 You'll see that eBay uses SimCare, marketed
7 hundreds of transactions. He got his money from them by
8 PayPal, and he shipped his packages from the Mays Landing
9 Post Office using postal Click-N-Ship accounts.

10 And he shipped them from his local post
11 office here into Philadelphia, into other parts of the
12 Eastern District of Pennsylvania, around the country and
13 around the world. And he sold his D.N.P. on eBay until
14 August of 2018 when eBay removed all sales of D.N.P. from
15 its website.

16 And around that same time, Customs and
17 Border Protection seized bulk D.N.P. that was destined for
18 Merlino's home in Mays Landing, New Jersey. And after
19 those two things happened, Merlino used his Facebook page
20 to advertise his website. He called it Fortis Supply and
21 he took orders by direct mail, simcare@gmail.com.

22 You're going to see those emails. He
23 continued to ship packages from the post office and
24 continued to use PayPal to make his money. But after eBay
25 stopped sales and after customs seized bulk D.N.P., the

1 defendant started getting more careful in his
2 communications with his customers.

3 And he started labeling his encapsulating
4 products that he shipped to customers with a label that
5 said not for human consumption. Nothing else had changed.
6 He still encapsulated the powder and offered it as -- as a
7 tablet or pill for an -- for an extra fee. Now the
8 defendant is charged with a single count, introduction of
9 misbranded drugs into interstate commerce.

10 And misbranding simply means that the false
11 marketing, the false advertising, the labeling that the
12 defendant did to hide from the government, his actual
13 business. The key to misbranding is the intent to
14 defraud. And the attempt to defraud and mislead here are
15 the regulatory agencies, the Food and Drug Administration,
16 Customs and Border Protection.

17 The misbranding here is the false claim
18 that this is not for human consumption, that this is
19 agricultural use, that this is fertilizer, when the
20 defendant knew and intended that it be used for human use.
21 That's what his business was, and that's who his customers
22 were, his customers knew. It was intended as a diet drug.
23 That's why they were buying from him.

24 The evidence will show you that 2,4-
25 Dinitrophenol is a drug because it was intended to operate

1 on the systems of the human body. And the evidence will
2 show that they were mailed into the Eastern District of
3 Pennsylvania. The evidence in this case consists of the
4 defendant's own words.

5 We can take a look at Exhibit One. You
6 will see during this case, a screenshot of the defendant's
7 Twitter account. The Twitter account is @drbill and he
8 used it to market D.N.P. for sale on eBay. The tweet
9 posted on January 3rd, 2018 reads, D.N.P. for sale on eBay
10 for weight loss, is not legal in U.S., so listed as
11 fertilizer on eBay. Hashtag diet, hashtag weight loss.
12 That's the scam because you will see Merlino's own words
13 on eBay and SimCare's records of eBay sales, you can take
14 that down. Hundreds of sales advertising D.N.P.
15 agricultural use, forty capsules, two hundred milligrams
16 each, D.N.P. fertilizer potted plants fifty by two
17 hundred.

18 You will see the defendant's own words to
19 Customs and Border Protection after they seized his bulk
20 D.N.P. In an attempt to get the product back from
21 customs, Defendant Merlino wrote a letter to Customs, and
22 he said, material. He told Customs, D.N.P. is used as a
23 herbicide and for preserving wood.

24 This product cannot be considered a drug as
25 it is toxic to humans. You will see the defendant's own

1 words in emails. Because beginning in August of 2018,
2 just as eBay was removing the sale of D.N.P. from its
3 website, Special Agent of F.D.A., Office of Criminal
4 Investigation, Special Agent, Bryan Arcari make undercover
5 purchases of encapsulated D.N.P. from SimCare and received
6 the encapsulated D.N.P. in the mail.

7 Now, Merlino was careful in those
8 communications. He was careful in those communications
9 with new customers. But you will see his emails with
10 long-time customers with loyal customers. You will see
11 with the trusted customers, when the defendant has
12 (unintelligible). He discussed capsules. He discussed
13 dosing.

14 He discussed with his international
15 customers, the need to label the product as yellow pigment
16 number twelve because that's an approved commercial use.
17 And this is at the very same time that he is shipping the
18 product and putting stickers on saying not for human
19 consumption.

20 Now in a different -- in addition to the
21 defendant's own words, you'll hear from some witnesses.
22 You will hear from the post office clerk. And while she
23 doesn't know the defendant's name, she remembers the
24 yellow-tinted man who shipped yellow-tinted packages daily
25 from the Mays Landing Post Office.

1 You will hear from a former employee of
2 Merlino and she recognizes the name SimCare, but she
3 doesn't know how her name ended up on a Click-N-Ship
4 postal account from which hundreds of mailings were
5 shipped. You will hear from an F.D.A. witness Dr. Arthur
6 Simone who will explain the key steps a person or company
7 has to take if they want to market a drug in the United
8 States.

9 There is animal studies, there is human
10 studies, there is clinical trials, all geared towards the
11 safety and efficacy for an intended use. And even then
12 the labeling and the labels have to be accurate. And none
13 of that's happened for D.N.P. You will see the physical
14 and photographic evidence of the defendant's business.

15 And that's because agents searched --
16 executed a search warrant on the defendant's residence and
17 they seized evidence of his business. You'll see
18 capsules. You'll see labels. You'll see the
19 encapsulating trays used to make pills. And you'll see
20 pictures of the bulk D.N.P. Empty containers from the
21 chemical supply company Sigma-Aldrich.

22 And after the evidence of the defendant's
23 scam on the F.D.A., you'll hear about one more set of
24 lies. Lies he told to avoid trial and to avoid answering
25 these charges in court. The evidence will show that in

1 August of 2021, after the defendant was charged when he
2 was awaiting trial, he faked pancreatic cancer.

3 He created a doctor's letter and created
4 hospital discharge documents, claiming he had pancreatic
5 cancer. He told his former lawyer he had pancreatic
6 cancer, and the lawyer sent those and he sent fake
7 documents to his former lawyer who forwarded them to the
8 Court and trial was postponed.

9 And in response to a January 2022 status
10 inquiry Merlino kept up the lie. And he fabricated
11 another doctor's letter, claiming that he had pancreatic
12 cancer. You'll hear from the defendant's former lawyer,
13 who will tell you how he received these documents. You'll
14 see the emails he received from Merlino.

15 And the attorney will tell you that Merlino
16 told him he had cancer. And then you'll hear from the
17 real oncologist, the one whose name is on the letter, who
18 will tell you, he did not write that letter. And Merlino
19 was not his patient. And you'll see the real medical
20 records from a person who had been diagnosed with
21 pancreatic cancer, not defendant, Merlino.

22 This is not a trial about the D.N.P.
23 customers. The evidence will show the customers wanted
24 these pills. The government does not need to show that
25 the customer was harmed. The government does not need to

1 show that customer was defrauded or misled. It's a trial
2 about the scam on the F.D.A., and on Customs and Border
3 Patrol to hide Merlino's business, selling D.N.P. for
4 human consumption.

5 And so your job at this point is
6 straightforward. Just listen carefully to the evidence in
7 this case, follow Judge's instructions on the law, and use
8 your commonsense to evaluate what you're hearing. At the
9 end of this case, I'll get a chance to talk to you again
10 and walk you through some of the most important evidence
11 in this case.

12 And at that time, I will ask you for the
13 only verdict that's warranted and that's the verdict of
14 guilty.

15 THE COURT: Mr. Gamburg, do you wish to
16 address the jury at this time?

17 MR. GAMBURG: I do, Your Honor. May it
18 please the Court?

19 THE COURT: Proceed.

20 OPENING STATEMENT

21 MR. GAMBURG: Counsel. Good afternoon,
22 ladies and gentlemen. And on behalf of everyone in the
23 Courtroom, we'd like to thank you for taking the time out
24 of your lives, your schedule, your family, your work, your
25 summer, to come and sit and listen to this case. Because

1 I agree with His Honor, short of military service, this is
2 the single most important function you can serve in a
3 democracy. And the reason why I say this is because way
4 back when, when our Constitution was written, and our Bill
5 of Rights was written, they realized that they were giving
6 the government awesome powers, very, very awesome powers,
7 the powers to conduct undercover investigations.

8 The power to go in and execute search
9 warrants into the sanctity of one's home. The authority
10 to bring someone up on charges that aren't warranted. So
11 what can we do to protect our citizens from these awesome
12 powers? I have an idea. We're going to bring people from
13 five counties, six counties, we're going to bring them
14 from all different backgrounds.

15 We're going to bring them from all
16 different life experiences. We're going to give them a
17 court order from the United States District Court, the
18 very first court in our country, commanding your presence
19 to come and answer what his Honor said, very personal
20 questions from a bunch of strangers and just come into a
21 room and met and it's -- it's prying a little bit.

22 But all everyone wants, this entire court
23 is for fair and impartial jurors like the founders
24 envisioned to come and sit and listen to this case. And
25 that's why, just like everyone else, the defendant is

1 presumed to be innocent. He's presumed to be innocent
2 because again, you now get information when you come down
3 Philadelphia to a criminal trial, criminal trial, what did
4 this guy do.

5 It's human nature, right? You want to
6 look, you want to see, that's why he's presumed to be
7 innocent because you don't know a thing about the case
8 yet. That's why the burden of proof is the highest in the
9 law, guilty beyond a reasonable doubt. Because I've never
10 (unintelligible) to be the sharpest knife in the drawer
11 but the product, this D.N.P. is misbranded because on all
12 the labels that you're going to see, it says not for human
13 consumption, that's the evidence. That's the evidence
14 that you're going to see. That's the evidence on the
15 packaging material. That's the evidence in the email.

16 That's the evidence. You're not going to
17 hear a lot of cross examination. You're going to hear
18 some cross examination on the former lawyer. But his
19 Honor is going to give you special instructions on how to
20 deal with that, because I submit to you, ladies and
21 gentlemen, I never understood what this cliché meant, but
22 that's a red herring; not pertinent, not germane to the
23 case. The case, as Ms. Burnes indicated to you is whether
24 or not these particular items that you're going to see,
25 that you're going to hear, that there is so many pictures

1 up on the screen, that there's going to be emails about
2 whether or not it was misbranding, and it wasn't.

3 So ladies and gentlemen, I (unintelligible)
4 to you, when you were brought in for your individual
5 questioning the individual voir dire, you are to decide
6 this case on the evidence that you hear, and the law that
7 the Court gives.

8 And when you decide this case on the
9 evidence that you hear, and the law that the Court gives,
10 there is only one verdict. I agree with Ms. Burnes,
11 there's only one verdict. And that's this defendant is
12 not guilty of misbranding anything. I thank you again in
13 advance for your time, and for your attention, and for
14 your willingness to serve.

15 Because there's a lot of doubt in many of
16 our minds that had you not wanted to serve, to take on
17 this awesome responsibility. You can easily come up with
18 a reason or an excuse, but now that you have agreed to
19 serve, and made this promise to us, that you can be fair
20 and impartial. And find the evidence as you find it and
21 follow His Honor's instruction on the law, if you keep
22 that promise you will see what the evidence shows. And
23 that is Dr. Merlino is not guilty of this. Thank you
24 again.

25 THE COURT: All right. Members of the

1 jury, we're going to try to work in one witness today to
2 make use of the time, so Ms. Burnes I understand you may
3 have a witness available.

4 MS. BURNES: Yes, Your Honor. The
5 government calls Natasha Bowens.

6 THE COURT: All right. Members of the
7 jury, I mentioned in my preliminary instructions that
8 there's certain kinds of evidence that's introduced for
9 certain purposes. And let me comment on that now. At the
10 end of the case, you've heard that there will be evidence
11 about certain conduct on the part of the defendant in
12 advance of trial.

13 I've ruled that you may hear that evidence
14 only to the extent that it may bear on whether there was
15 any consciousness of guilt. He is not on trial for
16 anything having to do with any misrepresentation. And
17 you'll hear that evidence and put it in proper perspective
18 when the time comes, all right. And I'll give you more
19 instruction on that later.

20 THE COURT CLERK: Please raise your hand.
21 Do you solemnly swear or affirm the testimony you give to
22 the Court and the jury shall be the whole truth and
23 nothing but the truth, so help you God or you so affirm?

24 MS. BOWENS: I do.

25 WITNESS: NATASHA BOWENS; Sworn

1 THE COURT CLERK: Thank you. Please state
2 your full name for the record.

3 THE WITNESS: Natasha Bowens.

4 THE COURT CLERK: Please spell your last
5 name.

6 THE WITNESS: B-O-W-E-N-S.

7 THE COURT CLERK: Thank you.

8 THE COURT: All right. Ma'am, you may have
9 a seat. And then if you can, pull up close to the
10 microphone and pull the microphone close to you, whatever
11 works.

12 THE WITNESS: Okay.

13 THE COURT: All right.

14 MS. BURNES: May I adjust so I can see the
15 witness too?

16 THE COURT: Sure. Whatever works.

17 DIRECT EXAMINATION

18 BY MS. BURNES:

19 Q. Good afternoon, Ms. Bowens. Can you
20 tell the jury where you work please?

21 A. Mays Landing Post Office.

22 Q. Okay.

23 MS. BURNES: Can everyone hear the witness?

24 THE COURT: Can we hear it? Good.

25 UNIDENTIFIED MALE SPEAKER:

1 (unintelligible).

2 MS. BURNES: Okay. You can pull that mic
3 right up to you.

4 THE COURT: It's -- it's not a good design.

5 BY MS. BURNES: (Cont'g.)

6 Q. Okay. And can you tell the jury your
7 full-time job title please?

8 A. Lead Clerk for the Mays Landing Post
9 Office.

10 Q. And how long have you been the lead
11 clerk at the Mays Landing Post Office?

12 A. Ten-and-a-half years now.

13 Q. What are your responsibilities as lead
14 clerk?

15 A. I do scheduling. I work the front
16 counter, (unintelligible) parcels, sort mail.

17 Q. And what's the zip code at the Mays
18 Landing Post Office?

19 A. 08330.

20 Q. When you -- when you say that you work
21 the front counter, what does that mean?

22 A. Process packages, letters, whatever
23 the customer brings in.

24 Q. Okay. So when an individual comes
25 into the post office to do a transaction, you're one of

1 the people at the window?

2 A. Yes.

3 Q. I want to direct your attention to
4 late 2017 and early 2018. Did you begin to have
5 interactions with a postal customer in the Mays Landing
6 Post Office that stood out to you and your coworkers?

7 A. Yes.

8 Q. And what were those transactions?

9 A. Click-N-Ship their prepaid packages.

10 Q. And why -- why did the transaction
11 stand out to you?

12 A. They had yellow substance on it.

13 Q. Okay. And what about the customer
14 stood out to you?

15 A. He had yellow hair, fingertips was
16 yellow sometimes and that's basically it.

17 Q. So he had yellow hair, do you mean
18 blonde hair?

19 A. No ma'am.

20 Q. Okay. When you say his finger, his
21 fingertips were yellow?

22 A. Yes.

23 Q. Okay. What did you and your
24 coworkers, how did you refer to this particular customer
25 among yourself?

1 A. The yellow man.

2 Q. And how often did you see the yellow
3 man?

4 A. Almost daily.

5 Q. And when you saw the yellow man daily
6 at the Mays Landing Post Office, can you tell the jury
7 what was the yellow man doing?

8 A. Bringing in prepaid packages.

9 Q. And when you say prepaid packages, can
10 you tell the jury what that means?

11 A. They print the labels at home which
12 they pay for and then they bring them in to us, we scan
13 them in. Most people would leave them, but some ask for
14 receipts.

15 Q. And in -- in the case of the yellow
16 man having prepaid packages, was that somebody who stood
17 in line and waited to interact with a clerk?

18 A. Yes.

19 Q. And when you interacted with the
20 yellow man, how -- how far were you from him?

21 A. About two feet, two-and-a-half.

22 Q. Now in terms of the pattern, you said
23 that that this customer came in daily. Was there a
24 particular pattern to -- to the yellow man and his
25 packages?

1 A. Other than the yellow substance, no.

2 Q. Okay. And could you estimate how --
3 what the range of packages were that he dropped off every
4 day?

5 A. It could be one, it could be ten, it
6 could be more.

7 Q. Were there occasions when packages
8 were dropped off in the morning and there was a return to
9 drop off more packages in the afternoon?

10 A. Sometimes.

11 Q. And with respect to the packages
12 themselves, what sort of containers were used to ship?

13 A. Priority mail.

14 Q. And can you tell the jury what a
15 priority mail envelope is?

16 A. We have flat rate, we have boxes, but
17 most of the time it was a flat rate envelope which is
18 about a two-to three- day shipping.

19 Q. On occasion did you have to provide
20 priority mail envelopes to this customer?

21 A. Well, they are able to get them from
22 the lobby themselves. They're stacked out and we would
23 just -- if it's somebody that gets a lot we would often
24 ask them if they didn't mind if we get them from the back
25 so they wouldn't take our supplies from the front.

1 Q. Okay. And was the yellow man one of
2 those customers that you would offer --

3 A. Yes.

4 Q. -- envelopes from the back?

5 A. Yes.

6 Q. So showing you what's been marked as
7 Twenty-nine P, Fifty-four P, Sixty-nine P and Eighty-six
8 P.

9 MS. BURNES: May I approach, Your Honor?

10 THE COURT: You may. And any counsel may
11 approach at any time.

12 BY MS. BURNES: (Cont'g.)

13 Q. Can you tell the jury what -- please
14 take a look at -- at Twenty-nine P.

15 A. Okay.

16 Q. And take a look at Fifty-four P. And
17 take a look at Sixty-nine P and Eighty-six P. Can you --
18 can you tell the jury what these four exhibits are?

19 A. They are prepaid Click-N-Ship
20 packages, three are priority and this one is just a
21 regular envelope.

22 Q. Okay. Are these some of the packages
23 that you were just telling the grand jury, I mean, the --
24 the jury about?

25 A. Yes.

1 Q. Okay. Are these -- are these packages
2 that were processed at the Mays Landing Post Office by the
3 yellow man?

4 A. Yes.

5 Q. Let's take a look then just on the
6 screen at the picture of Government's Exhibit Twenty-nine,
7 if you may just look on your screen, ma'am. And is that a
8 fair and accurate picture of the -- of the physical
9 envelope in front of you?

10 A. Yes.

11 Q. And if we move to Government's Fifty-
12 four. Is that a picture of the envelope that's Fifty-four
13 P?

14 A. Yes.

15 Q. And Sixty-nine, is that a picture of
16 Government Sixty-nine P?

17 A. Yes.

18 Q. And Eighty-six. Is that a picture of
19 Government's Eighty-six P?

20 A. Yes.

21 Q. Do the pictures fairly and accurately
22 depict the -- the envelopes that you're holding ma'am and
23 their labels?

24 A. Yes.

25 Q. Okay.

1 MS. BURNES: Your Honor, the government
2 moves admission of Twenty-nine P, Fifty-four P, Sixty-nine
3 P and Eighty-six P and the associated photos.

4 MR. GAMBURG: No objection.

5 THE COURT: They're admitted and may show
6 -- may be shown to the jury.

7 MS. BURNES: Thank you, Your Honor.

8 BY MS. BURNES: (Cont'g.)

9 Q. So let's start with Twenty-nine on the
10 screen. And if -- and if you just want to hold Twenty-
11 nine P, can you just explain now to the jury what sort of
12 postal this is? This is a priority mail envelope?

13 A. No, ma'am.

14 Q. Okay. What sort of envelope is it?

15 A. It's just a bubble mailer.

16 Q. Okay. And taking a look at the label,
17 the top of the page has Click-N-Ship. Can you tell the
18 jury what Click-N-Ship is?

19 A. Click-N-Ship are the -- people at
20 home, they pay for it. They put the labels on and they
21 bring them into the retail counter.

22 Q. Okay.

23 THE COURT: Let me interrupt one second,
24 counsel. That monitor appears to be out. So I notice all
25 the jurors are looking to this end of the box.

1 MS. BURNES: And that's the moment --.

2 THE COURT: It keen judicial instinct,
3 figured it out.

4 UNIDENTIFIED MALE SPEAKER:
5 (unintelligible).

6 THE COURT: Excellent.

7 BY MS. BURNES: (Cont'g.)

8 Q. So directing your attention then to
9 the label on Government's Twenty-nine. What is the return
10 address on that label?

11 A. 4630 Catawba Avenue.

12 Q. And is there an individual name
13 associated with that return address?

14 A. No, it's a business.

15 Q. Okay. And let's take a look at
16 Government Fifty-four. What is the return address on
17 Government's Fifty-four?

18 A. 4630 Catawba Avenue.

19 Q. Okay. And what's the business name
20 associated there?

21 A. Agro Fortis Supply (phonetic
22 spelling).

23 Q. Okay. And on the first exhibit that
24 was SimCare Associates Limited. Is that right?

25 A. Yes.

1 Q. Okay. Now, can you tell the jury and
2 perhaps we'll move forward to other exhibits. Taking a
3 look at Fifty-four, can you -- can you show the jury what
4 you mean about the yellow tint on the envelopes were
5 labeled?

6 A. On -- I don't know --.

7 Q. Chose -- chose an envelope, ma'am.

8 A. Okay. So yeah, there -- there is a
9 yellow tint, when we were touching it was like a powdery
10 substance. It wasn't just like the tint of the paper.

11 Q. Okay. You could -- you could feel it?

12 A. Yes.

13 Q. And -- and you put your hand around
14 the label?

15 A. Yes.

16 Q. Okay.

17 A. They're yellowish.

18 Q. And that's -- that's where a Click-N-
19 Ship customer would affix the label onto the envelope. Is
20 that right?

21 A. Correct.

22 Q. Okay. Now, you're holding up
23 Government's Fifty-four. Is -- is -- has the yellow faded
24 in -- in use since that envelope was processed?

25 A. I'm sure it has.

1 Q. Okay. In your experience, do you
2 recall the yellow -- how do you recall the yellow?

3 A. They -- some were brighter, some were
4 less, but they were definitely more yellow than this.

5 Q. Okay. Let's take a look at -- at
6 Government's Sixty-nine, if you take a look at that
7 envelope, what's the return address on Government Sixty-
8 nine?

9 A. 4630 Somers Point Road.

10 Q. Okay. Now, is that a different street
11 address than on the first two packages?

12 A. Yes.

13 Q. And what about the -- the business
14 name?

15 A. It's Agro Fortis Supply.

16 Q. Okay. And directing your attention
17 then to Government's Eighty-six. And what's the return
18 address on --

19 A. 46 --

20 Q. -- that envelope?

21 A. 4630 Mays Landing Road.

22 Q. Is that yet another address?

23 A. Yes.

24 Q. Now in terms of your contact with --
25 with your customer, who you call the yellow man and his

1 packages. What if any concerns did you have in processing
2 packages such as these envelopes?

3 A. We were concerned about the different
4 addresses -- addresses with the same name of the different
5 businesses going on. So we gave it to our supervisor.

6 Q. Okay. And did you have any concerns
7 with respect to the yellow tint?

8 A. Yes.

9 Q. What were those concerns?

10 A. Well, we didn't know what it was, so
11 we -- that's how we reported it to the supervisor.

12 Q. I want to direct your attention to
13 February 1st of 2019. Did a postal inspector interview
14 you about the customer whom you described as the yellow
15 man?

16 A. Yes.

17 Q. And had you identified a driver's
18 license photo of that customer?

19 A. Yes.

20 Q. Did you ever -- in the course of your
21 observations with this customer, did you ever see anyone
22 else with the yellow man processing these transactions?

23 A. No.

24 Q. And did you ever see anyone sending
25 mailings on his behalf?

1 A. No.

2 Q. Now it's been several years, ma'am.
3 Do you recognize anyone in court today?

4 A. Yes.

5 Q. And can you -- can you tell the jury
6 who you recognize?

7 A. The yellow man.

8 Q. Where do you -- can you just describe
9 where he's sitting please?

10 A. At the front table there in the blue
11 shirt.

12 MR. GAMBURG: Indicating the defendant,
13 Your Honor.

14 THE COURT: So noted.

15 MS. BURNES: Okay. I have no further
16 questions.

17 MR. GAMBURG: May I, Your Honor?

18 THE COURT: Of course.

19 CROSS EXAMINATION

20 BY MR. GAMBURG:

21 Q. Before becoming a supervisor, did you
22 work (unintelligible)?

23 A. No, ma'am -- sir. Excuse me.

24 Q. I did look a little feminine.

25 MR. GAMBURG: That's all I have, Judge.

1 THE COURT: All right. I assume there's no
2 redirect. And with that --?

3 MS. BURNES: No, Your Honor.

4 THE COURT: All right. Thank you, ma'am.
5 You're excused. And as I understand it, that will be our
6 only witness for the day. Is that correct?

7 MS. BURNES: Yes, Your Honor.

8 THE COURT: All right. The first day of
9 trial, it's always very hard for the attorneys to know how
10 far we're going to get. Sometimes we don't even get the
11 jury. Sometimes we don't get the opening statement. And
12 so if we can get one witness done, we're doing well. So
13 we do get a little bit of an early break tonight.

14 Get a chance to go home. Remember, please
15 don't start talking about the case. If somebody says,
16 what do you got? Say, I'm just on a criminal jury. I'll
17 be happy to tell you about it later. And don't be surfing
18 the web or doing any homework, okay. All you need to know
19 you'll hear inside the four walls of the Courtroom.

20 All right. And with that, we thank you
21 once again for your service, safe travels. We'll do our
22 best to get underway right at nine thirty tomorrow
23 morning. Mr. Henry will have your cell phones if you run
24 into a snag, you'll let us know. So we're not guessing.
25 And with that, once again, let's all rise in respect for

1 the hard work of the jury.

2 All right. Counsel, we're all lined up for
3 tomorrow?

4 MS. BURNES: Yes, Your Honor.

5 THE COURT: All right. If you don't need
6 me, then we'll adjourn for the night. If you do need me
7 you'll let Mr. Henry know and I'll be in my - do my best
8 to be in touch.

9 MS. BURNES: Thank you, Your Honor.

10 THE COURT: All right. Good night.

11 (Off the record at 16:06:49)

12 CERTIFICATION

13 I, Judith Spriggs, court approved transcriber, certify that
14 the foregoing is a correct transcription from the official
15 electronic sound recording of the proceeding in the above-
16 entitled matter.

17 

18 _____/

19 Judith Spriggs
20 Associated Reporters Int'l., Inc. 10th September, 2022

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